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The Issue of Genocidal Intent and Denial of Genocide

A Case Study of Bosnia and Herzegovina

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This article discusses the issue of special genocidal intent and, within it, the relevance of judicially established truths to the wider historical context. It suggests that genocide researchers should not rely only on verdicts—which either deny or confirm genocide—as historical truth but, rather, use the judicial process and trial evidence as signposts to direct their research. The author uses the case study of Serbian genocide against Bosnian Muslims from 1992 to 1995 to illustrate the failings of judicially established truths in determining wider historical truth. Wartime documentation, interviews with witnesses, and court transcripts are analyzed to illustrate how this wider truth is sometimes lost when focus on the importance of supporting documents is overshadowed by a final verdict. The case of Srebrenica is outlined to illustrate how documents used in trials, as well as witness testimonies, can contribute on their own to the understanding of historical truths. In this case, a selection of trial narratives and documents is used to examine not only if there was "special intent" among Serbian political leadership to exterminate Bosnian Muslims as early as 1992, but also to determine if international community representatives were aware of that intent and ignored it consciously.

Keywords: *genocide intent; Srebrenica; ICTY; Serbian nationalism; UN forces*

The question of intent—or, in the case of genocide, of special intent—is understood as part of a broader argument concerning which cases of mass violence are entitled to be labeled genocide and which are not. The Serbian genocide against Bosniaks (Bosnian Muslims) in Bosnia and Herzegovina from 1992 to 1995 is often highlighted in this debate. Authors differ in their interpretation of the conflict; some call it "genocide," and some, "ethnic cleansing."

Those who claim Bosnia and Herzegovina did not experience a genocide from 1992 to 1995 emphasize the lack of genocidal intent on the part of Serb perpetrators. Michael Mann, commenting on the judgment imposed on Radislav Krstić, who was found guilty of genocide in Srebrenica, says, "I would prefer to call this a local genocidal outburst, set amidst a broader murderous cleansing of Muslims which was too erratic and regionally varied to be called genocide."[1]

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Lately, there have been authors whose writing on this issue is conveniently compatible with verdicts from individual court cases at the International Criminal Tribunal for the Former Yugoslavia (ICTY), according to which genocide in Srebrenica, committed in July 1995, is the only instance of genocidal intent in the wider "ethnic cleansing" campaign that took place in Bosnia and Herzegovina. Often, it is implied that the events in Srebrenica were an inevitable result of that campaign of violence, but a distinction is made between the nature of that campaign and the genocide in July 1995. As Norman Naimark puts it, "After years of ethnic cleansing, punctuated by idle threats and diplomatic entreaties from the West, the Bosnian Serbs perpetrated a vicious act of genocide in Srebrenica."[2] This view is "politically correct" and falls in line with the interpretation of the Bosnian war promoted by a majority of international decision makers, who ignored their duty to prevent genocide—in Srebrenica and, this author argues, in other locations as early as 1992. Article 1 of the Genocide Convention reads, "The Contracting parties confirm that genocide, whether committed in time of peace or in time of war, is a crime under international law which they undertake to prevent and to punish."[3] Use of the term "ethnic cleansing" instead of "genocide" matters more than it may seem when it comes to international accountability. Research published in 2008 in the *European Journal of Public Health* traced trends in the use of the terms "ethnic cleansing" and "genocide" in *New York Times* articles from 1990 to 2005.[4] Journalistic coverage of events in Bosnia from 1990 to 1995, Kosovo from 1998 to 1990, Rwanda in 1994, and Darfur in 2003 were examined. The study also analyzed usage of the two terms in international legal literature, in UN Press Releases, and in statements made by Amnesty International and Human Rights Watch. This research confirmed that "the ratio between the terms—'genocide' and 'ethnic cleansing'—measures the will for emergency response."[5] From 1991 to 1993, the period in which the international community was indecisive regarding action in Bosnia and Herzegovina, the term "ethnic cleansing" appeared 3.5 times more than the term "genocide" in *New York Times* articles. As American policy moved towards intervention, from 1994 onwards, "use of the term 'genocide' greatly superceeded that of 'ethnic cleansing.'"[6]

A simplified interpretation of the political discourse that surrounded events in the Bosnian conflict is that the international community did not decide to intervene until after a massacre was committed in July 1995 in Srebrenica, and since their duty to prevent genocide was fulfilled only then, use of the term "genocide" is politically endorsed for only this massacre. According to this logic, all other crimes of the war were of lower intensity and lacked genocidal intent, and therefore the international community was not obligated to intervene, prevent, or stop them from the onset of violence in 1992. Martin Shaw claims that "'ethnic cleansing' comes without genocide's definite legal prohibition, but it also offers less of a theoretical challenge: it is

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a minimal euphemistic term, often adopted for reasons of intellectual as well as political avoidance."[7]

To ascertain how the term "ethnic cleansing" found its way from political corridors and academic analyses into court verdicts would be a very difficult and sensitive topic to research. However, the vast archive of the ICTY contains a rich documentary basis for research into many questions related to the wars in the former Yugoslavia. In this article, certain realities of international courts will be analyzed in an attempt to determine whether a broader look at judicial evidence could offer more to genocide researchers than the evidence presented in individual verdicts only.

The purpose of analyzing this documentation is to answer the question of whether, at a high political and military level, there existed genocidal intent, that is, the intent to destroy Bosnian Muslim and Bosnian Croat populations. The documents examined here also highlight the role of the international community, primarily UN forces on the ground, and help to determine whether some parties intentionally concealed evidence of Serbian genocidal plans and intentions.

Apart from the issue of intent, analysis of this documentation is also meant to provide some resolution as to the structure of Serbian violence against Bosnian Muslim and Bosnian Croat civilians. Was it really "too erratic and regionally varied to be called genocide," as Michael Mann claims,[8] or was it systemic, planned, and directed purposefully against civilians, with specific territorial and political goals driving the perpetrators?

The Inconsistency of International Law in Establishing Special Genocidal Intent

Guenter Lewy suggests that, "proof of specific intent is necessary to find an individual guilty of genocide, and the role of intent is similarly crucial when the historian assesses an episode of mass death that occurred in the past."[9] Lewy owes his views to a famous commentary on the Genocide Convention by Nehemiah Robinson, in which Robinson insisted that "acts of destruction would not be classified as Genocide unless the intent to destroy the group existed or could be proven regardless of the results achieved" and that the destruction of a group without such intent "would not fall under the definition."[10]

The perspective presented by Lewy, according to which perpetrators cannot be guilty of genocide if they have only *general* intent—that is, knowledge that their actions will contribute to genocide—but that they must exhibit the specific intent to destroy a nation, is in accordance with scholars (some of whom are cited above) who claim that the only massacre in Bosnia that meets the standard of genocide is that which occurred in Srebrenica.[11] According to this viewpoint, what took place in Bosnia began initially as forced migration, only later culminating in genocide.[12] Guenter Lewy recommends that historians essentially use the same model as judges

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to establish whether an event qualifies as genocide.[13] In the analysis that follows, which focuses on several inconsistencies of logic and the sometimes superficial methods employed by judges of the ICTY to reach verdicts related to the genocide of Bosnian Muslims, the underlying problems of this recommendation are examined.

There are inherent problems with using the verdicts of international courts to establish which historical cases of mass violence are genocide and which are not. It is true that the two international courts have delivered verdicts establishing that acts committed in Srebrenica in July 1995 amount to the only case of genocide in Bosnia and Herzegovina. It is important to note, though, that the verdict of the International Court of Justice (ICJ) was established without access to evidence—allowed in the ICTY case against Milošević but refused by the ICJ—that could have resulted in a different decision.[14] Yet judgments of the ICTY and ICJ are not the only verdicts related to this issue. A German court tried Nikola Jorgić, a Bosnian Serb war criminal, for crimes he committed in the Bosnian town of Doboj in 1992, and decided that Jorgić was guilty of genocide. Jorgić appealed this verdict in the European Court of Justice and lost his case.[15] It is clear, based on this example, that international legal mechanisms differ in their approach to evaluating the crime of genocide.

When scholars of genocide use legal standards to strengthen their arguments, they rarely take into account the dilemma among judges of how to reach consensus on what "specific intent" means. The difficulties that surround trusting judicial judgments without reserve is best illustrated by some practical examples, such as the ICTY case of Blagojević, who was indicted on five charges in 2002, including the charge of "complicity to commit genocide."[16] Initially, he was convicted of aiding and abetting before his sentence was reduced on May 9, 2007, by the Appeal Chamber, which overturned his conviction on genocide charges.[17] The two trial chambers came to these different conclusions by weighing the same evidence—the appellate judges were "not convinced by the Trial Chamber's reasoning" that Blagojević's actions proved his "intent to 'destroy' the protected group"[18]—with no new facts introduced in the appeal to result in the reversal. The Blagojević case is a very telling study on the subjectivity of the legalistic process in determining specific intent, but it also supports the argument that this narrow approach is not suitable for establishing historical truths.

Professor Tony Barta reminds us that

> intentions are supremely important in the world's grim record of genocide—but not because they are recorded as "intent to destroy." They matter least where they look like the legally decisive smoking gun. They matter most because of the way they are disguised. Intentions were disguised by the perpetrators of atrocities to make sure they were not called to account and they were disguised—also to escape responsibility—by those who should have called perpetrators to account. But that is only the beginning of the difficulties for a judicial criterion of criminal intent. Perpetrators and judicial authorities were able to disguise genocidal intentions from others most effectively where

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> they were also disguised from themselves—by appeal to the exigencies of self-defense, by reference to the larger aims of colonization, and to explicit measures asserting benign intentions towards the indigenous peoples who nevertheless continued to "disappear."[19]

Barta is specifically discussing historical denial of genocides of indigenous people, but this quote appreciates a reality that clearly extends to modern genocide studies and that might apply in the case of the Serbian disguise of genocidal intentions in Bosnia and Herzegovina.

It is interesting how often, in the midst of legal decorum, the subjectivity of judges allows special genocidal intent to remain disguised. The verdict of Momcilo Krajišnik is a good example. He was a key Bosnian Serb leader, acquitted of charges of genocide in Bosnia because the judges could not ascertain his specific intent. The "trouble" of judges in the Krajišnik case to establish specific intent is analyzed here through examination of a discussion held in the Bosnian Serb Parliament on May 12, 1992. In it, Radovan Karadžić, president of the self-proclaimed Republika Srpska, read the "six strategic goals of the Serb people," one of which was to physically "separate the Serb people from the other two (prevalent) national communities" in the country. Considering the multiethnic makeup of Bosnia and Herzegovina and other military goals presented that day, General Ratko Mladić warned the leaders, among them Karadžić and Krajišnik, that those aims could not be realized without genocide. Mladić explained that people are not like stones in someone's pocket that can simply be moved from one place to another just like that. He said, "We cannot . . . [use] a sieve to sift so that only Serbs . . . stay, or [so] that the Serbs fall through and the rest leave. . . . I do not know how Mr. Krajišnik and Mr. Karadžić would explain that to the world. That would be genocide."[20]

Reading through the larger discussion in the Bosnian Serb Parliament on that day, it is clear that Mladić's concern lacks a moral dimension. He is simply worried about the consequences of an international reaction. Therefore, he offers practical advice as to how the Serb plan should be put into action:

> We should not say, "We will destroy Sarajevo, we need Sarajevo." We are not going to say that we are going to destroy the power supply pylons or turn off the water supply, no, because that would turn America out of its seat, but . . . one day there is no water at all in Sarajevo. [Why] it is we do not know. . . . And the same with electrical power . . . we have to wisely tell the world it was they who were shooting, hit the transmission line and the power went off, *they* were shooting at the power supply facilities. . . . That is what diplomacy is.[21]

Those who followed events in Bosnia and Herzegovina during the war, and were cognizant of Serbian propaganda, will remember that Mladić's advice was taken seriously and served as the primary propaganda strategy throughout the war. Each time Serbian forces caused major massacres by shelling civilian targets, they broadcast

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that the Bosnian Army was killing its own civilians to provoke Western military intervention against the Serbs.

It is interesting that international judges understood Mladić's words as a diversion from the genocidal plan "to physically divide ethnic communities in Bosnia," and not as the formulation of "genocidal double rhetoric," famous throughout history in genocide cases. A more extensive reading of the entire transcript from the Bosnian Serb Parliament session on May 12, 1992, as well as those from subsequent sessions, shows that neither Mladić nor any other Parliament members withdrew support for the initial strategic goals presented by Karadžić. Let us keep in mind that Mladić patiently warned that such goals would not be realized without genocide. He not only advised Serb leaders on how to conceal genocide from the world but made a mockery of international diplomacy. Krajišnik, who was the president of the Bosnian Serb Parliament, was one of those present when Mladić warned that the only possible result of Serbian strategic goals was genocide.

The Krajišnik judgment illustrates that the disguise of genocide recommended in the Parliament that day in May actually worked, misleading not only international diplomats but the judges at the ICTY as well. One of the most explicit examples of genocidal military and political leaders agreeing to a double rhetoric was accepted by tribunal judges as something other than genocide. Here is how the judges of the ICTY interpreted these same words of Mladić in the Krajišnik judgment: "But there was an alternative to genocide. Mladić advised Bosnian Serb leadership on how to achieve controversial military objectives quietly, cynically, ruthlessly, while staying below the radar of international attention."[22] This seems to be a model example of how, very often, documents presented in international courtrooms are interpreted by judges who read them "without an eye for coded designs and experienced actualities."[23]

Without the burdens of verdicts and "judicial truth" as standards of what special genocidal intent actually is, or means, the following analysis of documents presented in ICTY courtrooms—the authenticity of which has not been disputed so far—aims to further illustrate the importance of utilizing a wider documentary base, and not limiting research to individual verdicts, when searching for answers to the question of genocidal intent.

Evidence of "Specific Genocidal Intent" or "Ethnic Cleansing without Genocidal Intent"?

Did Bosnian Serb leadership have plans to destroy Bosnian Muslims and Bosnian Croats from the territories they designated as Serbian? The six strategic goals revealed by Radovan Karadžić in the Bosnian Serb Parliament on May 12, 1992, are as follows: (1) separation of Serbs from the other two national communities, (2) establishment of a corridor between Semberija and Krajina, (3) elimination of the Drina river as a border between Serbian states, (4) establishment of a border on the Una and Neretva

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rivers, (5) division of the city of Sarajevo into Serb and Muslim sections, and (6) access to the sea for the Serbian Republic of Bosnia and Herzegovina.[24] Milan Babić, a political leader of the rebel Croatian Serbs, testified during the Milošević trial as a witness to the Serb genocidal plan.[25] He reiterated Karadžić's plans, formed in July 1991, to expel Bosnian Muslims to the river valleys and connect all Serb territories in Bosnia and Herzegovina. Back then, Babić testified, Milošević had warned him not to "stand in Radovan's way."[26]

Karadžić did not hide his genocidal intent. In fact, he shared it in conversations with his close allies. In a September 1991 exchange with Momčilo Krajišnik, arguably his first ally, he mockingly practiced a speech to be delivered to Bosnian Muslims and Bosnian Croats pursuing plans for the independence of Bosnia and Herzegovina: "Can't you see where this leads? Don't you realize that you will disappear? . . . Man, will you disappear. Many of us will disappear, but you will be annihilated!"[27] On October 12 that year, Karadžić told Gojko Djogo, "I think that they should be beaten if they start a war. . . . They will disappear, those people will disappear from the face of the earth if they insist."[28] To Momčilo Mandić, on October 13, he said, "In just a couple of days Sarajevo will be gone and there will be five hundred thousand dead, in one month the Muslims will be annihilated in Bosnia."[29] Only three days later, Karadžić repeated the same to his brother, revealing his intentions if Bosnia and Herzegovina seceded from Yugoslavia: "There will be a war until their obliteration. . . . First of all, none of their leaders will live. They will all be killed in three or four hours. They won't stand a chance."[30]

After examining such documentation, should one give Karadžić the benefit of the doubt as to whether he had specific genocidal intent? He was not alone; it is important to note that evidence presented in The Hague makes it clear that discourse on the destruction of Bosnian Muslims and Bosnian Croats was not exclusive to Radovan Karadžić. Sveto Veselinović, president of the Serbian Democratic Party (SDS) in Rogatica, was recorded saying that "a third of the Muslims will be killed, a third will become Orthodox, and the third will escape."[31] Minutes of the Bosnian Serb Assembly show that discussions about the extermination of people occurred very much in the open. When Miladin Nedić, president of the SDS in Lukavac, addressed the Assembly in July 1992, he declared that Serbs were indeed meant to be the executioners of Muslims and that by fulfilling this role they would be doing others a favor.[32] For whom did Nedić believe Serbs were doing a favor? His leader, Radovan Karadžić, explained:

> We know well there is no life, no tolerance if there is fundamentalism. Their birth rate quadruples, and we the Serbs cannot cope with that, not even Christians in Lebanon can handle the Oriental mentality resulting from Islam. . . . Neither the Serb nor Croat birth rate calculated together can control the incursion of Islam into Europe, because in 5 to 6 years there would be 51% Muslims in unitary Bosnia . . . this conflict was instigated to make Muslims disappear.[33]

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Is there a foundation for Radovan Karadžić's idea that Europe would support the "disappearance of Muslims," or Miladin Nedić's claim that Serbs are the "determined executioners of Muslims?" After all, both statements imply that Serbs had at least tacit approval for, and were saddled with predetermined responsibility for, genocide against Bosnian Muslims from Christian Europe.

The recent publication of presidential confidant Taylor Branch's record of Bill Clinton's time in the White House sheds some light on the answer to this question. According to Branch, Clinton himself confirmed that key European political players, primarily the United Kingdom and France, had clear anti-Muslim agendas in Bosnia and Herzegovina.

> Clinton said U.S. allies in Europe blocked proposals to adjust or remove the [international arms] embargo [on the former Yugoslavia]. They justified their opposition on plausible humanitarian grounds, arguing that more arms would only fuel the bloodshed, but privately, said the President, key allies objected that an independent Bosnia would be "unnatural" as the only Muslim nation in Europe. He said they favored the embargo precisely because it locked in Bosnia's disadvantage. Worse, he added, they parried numerous alternatives as a danger to the some eight thousand European peacekeepers deployed in Bosnia to safeguard emergency shipments of food and medical supplies. . . . While upholding their peacekeepers as a badge of commitment, they turned these troops effectively into a shield for the steady dismemberment of Bosnia by Serb forces. . . . President Clinton only shrugged. He said President François Mitterrand of France had been especially blunt in saying that Bosnia did not belong, and that British officials also spoke of a painful but realistic restoration of Christian Europe. Against Britain and France, he said, German chancellor Helmut Kohl among others had supported moves to reconsider the United Nations arms embargo, failing in part because Germany did not hold a seat on the U.N. Security Council.[34]

Could this anti-Muslim political sentiment among British and French decision makers be the reason some UN officers played down the dire situation on the ground? And could that be at least part of the reason why use of the term "genocide" was not politically approved? The case of Srebrenica informs the analysis of these queries and, as presented here, offers empirical arguments for Marin Shaw's foundational assumption "that genocide is *intentional action* aimed at the destruction of social groups, together with its implication that genocide is defined by the *subjective meaning* attached to it by the actors conventionally described as 'perpetrators.'"[35] Shaw stresses the destruction of a civilian population, and according to him, "the missing link of genocide studies is the core social distinction between combatants and civilians (or non-combatants)."[36]

Srebrenica is singled out in this article because of the prevalent view that only the events that took place in Srebrenica in July 1995 should be regarded as genocide. Therefore, for the purpose of presenting a more concise argument, the focus here is on the region of Eastern Bosnia and the area surrounding the town of Srebrenica. But

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this article analyzes a time frame, the years of 1992 and 1993, often overlooked by genocide researchers, a time frame in which the Bosnian Serb plan was being formed and implemented. On March 24, 1992, Radovan Karadžić addressed the Assembly, declaring, "In the next three or four days, the methodology will be unique and you will be able to apply it in the municipalities you represent, including the things that must be done as well as the method of work; how to separate the police force, take the funds that belong to the Serbian people and establish control."[37] This methodology was in fact applied in all the areas of Bosnia and Herzegovina that Bosnian Serb strategic goals designated ought to be "free" of Bosnian Muslims and Bosnian Croats.

Background of the Plan for Genocide in Eastern Bosnia

The objective that drove the Bosnian Serb and Serbian aggression on Bosniaks (Bosnian Muslims) in Bosnia and Herzegovina was the forced creation of a Greater Serbia. Sokolović points out that the establishment of this political formation had genocide at its core. "The genocide was the ultimate goal and occurred as an immediate step, not as an outcome of war."[38] Eastern Bosnia was an important part of the plans for a Greater Serbia. Adjoined with Serbia proper, and with a majority Bosnian Muslim population, this area was the first target of Serbian offensives.

A war against Bosnian Muslim civilians was waged in all Eastern Bosnian towns—Zvornik, Bratunac, Vlasenica, Rogatica, Foča, Višegrad—and surrounding villages. Each of these operations required a clear plan and the backing of the state. They were prepared long in advance and necessitated military control. Before the Serbian aggression in Bosnia, a number of Bosnian Serb volunteers fought on the side of the Yugoslav National Army in the war to oppose Croatian secession. Also, the arming of Serbs in the villages around Srebrenica was part of the long-term plan for the whole of Eastern Bosnia and started at least a year before genocide began. Bosnian Muslims in Eastern Bosnia lived in fear as a result.[39]

The beginning of genocide and aggression in Srebrenica resembled that in all the towns and villages in Eastern Bosnia, as well as in all other areas of Bosnia and Herzegovina designated for "ethnic separation." Indeed, the same methods used in Eastern Bosnia were applied in Northwest Bosnia. In Srebrenica, like in all other towns, Serbs first demanded division of the local police force along ethnic lines and followed that with an ultimatum on April 18, 1992, that stipulated that Bosnian Muslim policemen surrendered their weapons.[40] A policeman who was part of a group from Srebrenica that chose to flee to the surrounding hills explained, "We decided to evacuate the population, since we knew that Serbs were killing people in the neighboring town of Bratunac."[41]

Bosniak policemen split themselves into several factions in an attempt to manage and protect fleeing people. These unconnected and self-organized groups were a

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nucleus for resistance to Bosnian Serb aggression in 1992 and 1993. During the early occupation of Srebrenica, most of the Bosnian Muslims who stayed in the town were killed and their houses burned. Bosniak resistance fighters fought the Serbian Army in the forests and, on May 8, 1992, killed Bosnian Serb regional political leader Goran Zekić. According to some interpretations, his death was a deciding factor in the call by the Serbian Army to start withdrawing from Srebrenica valley the following day. The death of their leader was demoralizing, and the attacks of Bosnian Muslim resistance fighters made them tactically insecure in the area.

Word that the Serbs had left Srebrenica under the pressure of Bosniak fighters spread quickly among Bosnian Muslim refugees camped in the woods. In only a few days some ten thousand refugees returned to Srebrenica. Under continuous Serbian shelling and the contraction of Eastern Bosnian enclaves, that number grew dramatically. From December 1992 to March 1993, estimates by independent observers of the number of refugees in Srebrenica varied from forty to eighty thousand.[42]

At the end of May 1992, armed Bosniaks made attempts to better organize their resistance. It was difficult to create order amidst the chaos of an overcrowded town full of hungry and starving refugees living on the streets. By entering Srebrenica, many Bosniaks thought they were making the safer choice. Rather than remaining in the woods, they hoped that their chances for survival would be better in a community with other refugees. Ironically, though, the liberation of Srebrenica by Bosnian Muslim fighters had added a very specific dimension to the already-existing humanitarian catastrophe at hand. Refugees were not aware that when they entered Srebrenica they were closed in the final trap of a genocidal campaign. The area around Srebrenica was exposed to shelling every day, and minefields were planted all around the town. Bosnian Serb forces closed all exits to free territory and cut off access to food supplies. Many Bosniaks were killed by snipers and shells and many more in the minefields; and others who tried to escape ended up in Serbian concentration camps in Sušica and Karakaj, where they were tortured or killed.

The Method of Starvation and Genocidal Intent

The Genocide Convention leaves no doubt that intentional starvation is genocide. The practice is clearly associated with genocidal intent and is documented in concentration camps and in cities under siege, where the aggressor can impose inhuman living conditions on the civilian population. Starvation as a method of genocide is recognized in a number of historical cases. For example, many scholars recognize genocidal intent in the starvation levied on the people of Ukraine in 1932 and 1933 by Soviet authorities. Imposed hunger on forcibly deported Armenian refugees was also one of the genocidal methods of the Young Turks.[43]

Recent analysis of the genocide in Darfur shows a similar pattern of intentional starvation. An article published in the *Journal of Genocide Research* by Vanrooyen

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et al. offers evidence that "the Government of Sudan and its proxy militia, the Janjaweed, have created conditions of life for many thousands of non-Arab Darfurians that guarantee the destruction of their livelihoods, lives and communities."[44] Survivors of the aggression, who offered eyewitness accounts for the article, reported comments made by their attackers such as "Don't waste the bullet . . . they have nothing to eat, they'll die in the dessert."[45]

Vanrooyen et al. point to Article IIc of the Genocide Convention, according to which genocide is—apart from killing members of a group (a), and causing serious bodily and mental harm (b)—an act committed with the intent to destroy a national, ethnic, racial, or religious group by "deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part."[46] Documents presented below, only a small selection of those related to events in the territory of Eastern Bosnia in 1992 and 1993, offer convincing evidence that the Serbian political and military leadership had a plan to destroy part of the Bosnian Muslim nation as such. These documents are the proverbial "smoking gun" that proves that Bosnian Serb authorities intended to commit genocide against Bosnian Muslims, gave orders for it, and used political and military power to implement it.

This analysis requires a look back to the first publicly uttered threat of genocide from Radovan Karadžić, the Bosnian Serb political leader now indicted for genocide by the ICTY. On the night of November 14, 1991, Karadžić threatened that the Bosnian Muslim people would disappear if Bosnia chose to pursue independence. Karadžić said, "Don't think you won't take Bosnia and Herzegovina to hell, and maybe make the Muslim people disappear. Because in the case of the war, the Muslim people will not be able to defend themselves."[47]

Original directives of the Bosnian Serb Army (also referred to as the Army of the Republika Srpska, or VRS), from November 1992 adhered to rhetoric set by Radovan Karadžić in the Bosnian Serb Parliament. Directive no. 4, dated November 19, 1992, articulated the aim to "launch offensive operations to crush large HVO [Croatian Defense Council] and Muslim groupings in the territory of the Republika Srpska and to force them into unconditionally surrendering their weapons, or *destroy* them" (emphasis added).[48] The date of the offensive was planned for November 24, 1992. This directive also articulated the precise aims of the Drina Corps: "From its present location its main forces shall persistently defend Visegrad [the dam], Zvornik and the corridor, while the rest of its forces in the wider Podrinje region shall exhaust the enemy, inflict the heaviest possible losses on him, and force them to leave the Birač, Žepa and Goražde areas together with the Muslim population. First, offer the able-bodied and armed man surrender, and if they refuse, *destroy* them" (emphasis added).[49]

To prevent the Bosnian Serb Army from taking over the enclave, the United Nations declared Srebrenica a "safe area" in April 1993. However, the genocidal strategy of starvation and shelling continued. Many documents substantiate the continuity of Bosnian Serb intentions, despite international intervention, toward the Eastern

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Bosnian population in the so-called "eastern enclaves." In March 1995, Radovan Karadžić personally sent a directive to the Drina Corps that shows continuity in genocidal intentions. Karadžić wrote that the Corps was to, "on a day-to-day basis, in an organized manner and by military activities . . . create conditions of total insecurity, an unbearable situation without hope for further existence for inhabitants of Srebrenica and Žepa."[50]

These directives to the VRS from Karadžić are clear examples of the distinction Martin Shaw makes when he discerns war from genocide. Shaw makes the point that in war the enemy is understood as another state or armed organization, while in genocide the enemy is a social collective. "Killing plays a central part in war, but the logic of war in general does not dictate killing of all the enemy's troops: rather killing is a means, along with others, directed to the aim of destroying power."[51] It is explicit in the documentation introduced above that Bosnian Serb leaders do not make the distinction between armed troops and civilian inhabitants of Srebrenica and Žepa (after all, both the "able-bodied and armed men" are to be confronted). Total destruction is a final destination for them all.

Genocidal rhetoric is a key variable that can help social scientists establish whether a case of mass atrocity is genocide.[52] But to implement such a mass atrocity, it is necessary to have substantial participation by perpetrators. These elements—of dehumanization and participation—in the Bosnian Serb process are illustrated below.

As far back as November 1992, there is evidence that, through dehumanization of Bosnian Muslims, Bosnian Serb political and military leaders managed to gain support for their extermination policies at all levels of the VRS. The Bratunac Brigade was formed on November 14, 1992, in the town of Bratunac in Eastern Bosnia. In a ceremony to celebrate the establishment of the Brigade, Bosnian Serb General Živanović addressed the soldiers:

> The winter is coming and I think and expect that the winter will be our ally. Results of our fight so far are impressive, great results. How great? Well, we hold 80,000 Turks [Bosnian Muslims] in circles. Turks from Cerska are disconnected from the Turks from Srebrenica. Turks from Kladanj are disconnected from the Turks from Srebrenica and Cerska. . . . And now it is necessary to be persistent, wise, intelligent Serbian warriors, and not to fall to some petty Turkish tricks. Reconnoiter them constantly. Prepare the trap for them and wait. Do not fall to naïve tricks. . . . The Turk is a very, very cunning enemy.[53]

General Živanović was addressing midlevel officers as well as soldiers. He referred in every instance to Bosnian Muslims as "Turks." In national mythology, dating back to the Ottoman Empire, Turks are seen as the mortal enemies of the Serbs and a threat to their national identity. Equating Bosnian Muslims with Turks implied that they did not deserve mercy. What that mentality meant for the Bosnian Muslims in Srebrenica was emphasized by the speech of Colonel Svetozar Andrić, who spoke immediately

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after General Živanović at the Bratunac Brigade ceremony. In his speech, genocidal intentions are even more explicit, as he hails the general's comments about Srebrenica: " . . . once, maybe five months ago, the General also said 'We shall get there *even if we have to bury it*'" (emphasis added).[54]

Following these two speeches, VRS soldiers joined in singing, "We shall slaughter, we shall slaughter all those who do not want to join us."[55] The recording of this ceremony, which is archived at the ICTY, could offer an instructive case study on how the norm of genocidal intent "trickles down" from higher political and military levels to midlevel officers and ordinary soldiers.

The Role of the UN: Negligence or Active Collaboration in the Genocidal Campaign of Starvation in Srebrenica

As Živanovic described to his troops, Srebrenica was isolated and cut off from its neighbors and the rest of the world. After Bosnian Serb forces surrounded the town, they imposed an embargo on food deliveries consistent with aims outlined above; the goal was the starvation of Bosnian Muslim civilians and the creation of unbearable living conditions. This same methodology of intentional starvation was applied in all six of the areas that were declared "safe" by the United Nations in 1993: Sarajevo, Goražde, Žepa, Srebrenica, Tuzla, and Bihać. However, the so-called eastern enclaves were faced with an especially difficult situation due to the fact that they were isolated from the central Bosnian government; the in-country United Nations headquarters; and international journalists, who had trouble accessing the eastern part of the country. Srebrenica, along with Goražde and Žepa, was one of the three eastern enclaves in which civilians were intentionally starved by Bosnian Serb forces. The VRS blocked the main road, but they were helped by United Nations troops, whose unenthusiastic service in the "safe area" buoyed the intentional campaign of starvation. Starvation, of course, was not the only extermination method applied by the Bosnian Serbs. Daily, civilians were bombed by heavy artillery, sniped, and exposed to aerial bombardment. Analysis of some United Nations reports from 1992 and 1993 reveals the ambivalence of the UN despite these attacks.

One of these reports describes a meeting between French General Morillon, who led the UN forces, and Serbian General Mladić. At the meeting, Morillon agreed that the UN would deliver food aid to the alleged five thousand Bosnian Serb refugees in need of help. The report concluded that it was not clear whether that agreement was meant to include humanitarian aid for Bosnian Muslim civilians of the town as well.[56] From a letter sent by Jose Maria Mendiluce only two days later, on November 17, 1992, it is apparent that the agreement between Mladić and Morillon was meant only to provide help for Serbs. Mendiluce wrote that the "UNHCR [United Nations High

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Commissioner for Refugees] has been delivering major and growing quantities of supplies to locations under Serbian control."[57] Throughout the letter he makes it clear that the UNHCR will stop this practice, and he underlines his disappointment in General Mladić's refusal to allow UN convoys to reach Bosnian Muslim refugees, stating that "General Mladić's position is, consequently, a step backwards from our agreement to preserve the very basic human right of survival of the civilian population."[58]

UN reports from this time were written by any number of different people. The obvious aim of some of them is to downplay the devastating situations in Srebrenica and Zepa. A report written in March 1993, after the fall of Cerska, serves to illuminate this reality. The report explains that after Cerska fell, around five thousand refugees came to Srebrenica, while another eight thousand people remained hiding in the mountains. In very bureaucratic language, the writer of the report notes that "the population did not appear to be starving but neither were they well nourished."[59] Not until point 13 of this report (buried at the end of the third page and given little importance) is the testimony of a Reuters journalist included. "[The] journalist (who said much that was later corroborated), stated that he had seen some corpses like those from Somalia, that had clearly died of starvation, but only at Srebrenica."[60]

Reports of UN officers vary widely in their assessment, depending on who wrote them. To some, the situation was not very alarming, and consequently they were of the opinion that more serious action by the international community was unnecessary. Others, however, saw it very differently. Major J. J. Purves reported on the Bosnian Serb offensive on Srebrenica with considerable concern. The following quote confirms that he recognized the genocidal intent of the Serbs as early as March 1993:

> This offensive is creating a refugee situation of huge proportions. The number of refugees in the Srebrenica enclave is assessed to be around 80,000. . . . A death rate of 20 persons per day is reported. . . . If free passage (with transport) cannot be arranged for the refugees in the Srebrenica pocket within the next 7 to 14 days, indications are that the Serbs will carry out a "genocidal cleansing" of the entire enclave, resulting in the potential death of 80,000 human beings. In any case, there is little hope that current efforts to get the Serbs to halt their attack will be successful. They are unlikely to stop their offensive until the enclave is cleared one way or another.[61]

Ambassador Diego Arria, the representative from Venezuela and president of the UN Security Council, initiated a mission to visit Srebrenica on March 24, 1993. He testified twice at the ICTY about attempts by UN bureaucracy to cover up the real state of affairs in Srebrenica. According to his testimony, he and the ambassador from Pakistan pressed the Council to send the mission after seeing the siege of Srebrenica on television. Arria claimed that the Security Council was the least informed body, officially and institutionally, because "information was used as a weapon to obstruct the view of realities on the ground."[62]

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According to Ambassador Arria, there was a systematic obstruction by the UN of any troubling information received by officials about Bosnia. One example of that conspiracy was the handling of a letter sent by Sadako Ogata, head of the UNHCR, to Secretary General Boutros Boutros-Ghali on March 18, 1993. Ogata wrote a distressing letter about the siege of Srebrenica, in which she said it was causing a humanitarian catastrophe and the deaths of thirty to forty people a day from starvation and lack of medical aid. Arria testified that Boutros-Ghali simply hid this letter in his desk drawer.[63]

During his testimony, Ambassador Arria recalled scenes he saw in Srebrenica on March 24, 1993. He described devastation—old women, men, and children living on the streets. "No water, no electricity, no gas, no doctors. And we had been told they were under siege and surrounded by Serb tanks all around. It looked like a shooting gallery where the people in the village are down [below] and the Serb tanks surrounded them, so that they could shoot them . . . at their mercy, at their will. This malice, this stagnancy—in my whole experience I had never seen anything like it."[64]

Arria remembered addressing other members of the mission delegation, saying, "What we have here is a *slow-motion genocide* taking place under the protection of the United Nations" (emphasis added). In his testimony, Arria mentioned that the UN officers looked more like guards in a concentration camp than protectors of the people.[65] He went on to discuss the respect shown by UN troops on the ground toward the Serbian occupiers, offering the example of British Brigadier Hayes. "Well, Brigadier Hayes behaved more like a subordinate to the Serb side in Bosnia then as a real officer. We were surprised, the mission, to see how respectful he was with the Serb side and how disrespectful he was with the country that was hosting him."[66]

What made Brigadier Hayes behave that way? And why did Ambassador Arria and some other UN officers recognize Serbian genocidal intentions in 1992 and 1993, while for others it is difficult—despite overwhelming evidence—to see it even today? Could this behavior be linked to the anti-Muslim policies of France and Europe recognized by President Clinton? Those who deny that Serbs had specific genocidal intent try to defend their argument with the fact that the victims, Bosnian Muslims, attempted to retaliate.

Defenselessness of the Victim

In the popular understanding, a genocide victim is a defenseless victim, one who does not try to resist. That stereotype is partly due to the misperception that Jews, the WWII genocide of whom most people are aware, did not attempt to resist Nazi extermination policies. The research of Yehuda Bauer strongly opposes this thesis and provides evidence of different forms of Jewish resistance.[67] Further, Helen Fein offers convincing arguments against the idea that victims of genocide need be totally innocent of attempts at defense to be considered as genocide victims.[68]

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The general underlying idea that follows from Fein's argument is that it is not important if the victim tries to resist; what matters for the final qualification of the conflict is if the victim succeeds in resistance to genocide or not.[69] Shaw's analysis of the relation between war and genocide is also instructive for the understanding of a victim's position, and he uses the example of Bosnia: "In this case, genocide was a major war aim on the side of genocidists, in terms of which other aims, such as territorial expansion made sense. Likewise, resistance to genocide was the aim of the opposing forces."[70] Considering the post-Yugoslav conflict as a whole, Shaw sees Serbian forces as the prime movers and perpetrators of a genocidal war. He also explores the notion of countergenocide, emphasizing that "of the major political-military forces involved, only the Bosnian government did not pursue directly genocidal policies, and even it was compromised by its tacit endorsement of the flight of large parts of the Serb population."[71]

The brief chronology of events surrounding the attack against Srebrenica, presented above, includes mention of the fact that some Bosniaks refused to give up their weapons, withdrawing to the hills. That first month of guerilla-type actions, which surprised VRS forces, set the general model for Bosnian Muslim resistance. Bearing the pressure of a starving population, defenders of Srebrenica attacked villages in which the Bosnian Serb Army was based, using covert tactics. These actions took place between June 1992 and March 1993, and their benefits were twofold: supplies of food were obtained, and weapons were acquired. At the same time, Bosniak defenders neutralized Serb military positions from which forces had shelled Srebrenica, holding it under siege. Bosnian Serb villages around Srebrenica had in fact been transformed into military bases. The strongest VRS forces were attacking from the villages of Kravica, Ježestica, Ratkovići, Fakovići, Bjelovac, and Sase.[72]

The dynamic of guerrilla actions for the retrieval of food was dictated by the entreaties of starving people who demonstrated outside the War Presidency building in Srebrenica. They asked that the defenders lead people into "actions for food," and international observers eventually adopted this term. Many people who lived through the siege in Srebrenica claim that the terrible feeling of hunger they suffered was much worse than the fear of shelling or sniper bullets. Mesud Omerović, a judge from Srebrenica, remembers that the winter of 1992 to 1993 was one of the most horrible experiences in his life. "I was hungry. I received a small bag of walnuts from my friends. It was a small amount and I decided to eat them slowly. Every day when I was getting ready to go to work, I would put one walnut in my pocket. And then, while at work I would wait for the right moment to eat it."[73]

Because Serb forces would not allow UN convoys to deliver aid to Srebrenica, the only sources of food were in surrounding Bosnian Serb villages. These villages, as already stated, served as ad hoc military bases. It was possible to get hold of food in these villages but only at the risk of a huge number of Srebrenica's civilians. Defenders of Srebrenica knew that actions for food could not be kept secret and that

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civilians would join the efforts. Sometimes, civilians even entered these Serb villages before the guerrilla action had even started.[74]

A number of people interviewed as a part of the research for this article corroborated the desperation of hungry people in Srebrenica, especially from December 1992 to March 1993. Many Srebrenica inhabitants have claimed that, during actions for food, they did not fear shells and it did not matter to them that they could lose their life once they were aware that food was within reach—all that mattered was that they acquired provisions. During one action for food that Srebrenica resident Sabra Kolenović joined, she found that, without her permission, her desperate, twelve-year-old son also took part. She describes why:

> Days before that action he was hungry. Even today, I remember him sitting behind the kitchen table, holding his head in his hands, while big tears are pouring down his face. It was the 15th day that I could not find any food for my sons. He was not even telling me that he was hungry. He was just sitting, crying quietly. The following day, with other people from Srebrenica I went to actions in Kravica. I sneaked out early in the morning. Without me knowing, he followed the column of people on their way from Srebrenica.[75]

Serbs from the surrounding villages participated en masse in the expulsion and killing of Bosniaks, as well as in keeping them under siege. But the question is often asked of whether they were aware of the desperate situation faced by Bosniaks in Srebrenica. Slavoljub Žikić testified at the ICTY about the invasion of his village, Fakovići, by civilians and armed guerrilla fighters from Srebrenica in October 1992. A Bosnian Serb, Žikić hid, observing the course of action and the behavior of the invading civilians. He contended that no army in the world could have stopped those people, desperately looking for food. "I totally understood them," he said.[76] A document of the Bosnian Serb Army, dated December 28, is very telling regarding the behavior of hungry Bosnian Muslim civilians, who continued their search for food despite constant shelling: "There are around 500 fighters in this area, and according to our estimate, many more civilians, women and children. Their number is increasing as the night is falling, and they are moving freely in columns, despite our continuous shelling."[77]

Conclusion

Genocidal intent is one of the most widely discussed issues regarding the characterization of mass crimes committed in Bosnia and Herzegovina. It is the notion that this intent is indeterminate that serves as the basis on which political forces and scholars who do not recognize genocide in Bosnia argue most of the time. Judgments of the ICTY for individual crimes, as well as ICJ judgments in the case of *Bosnia*

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and Herzegovina v. Serbia, are also commonly used to support the argument that the only genocide that took place in Bosnia and Herzegovina occurred in Srebrenica and, furthermore, that it lasted for only several days in July 1995. Dependence on these verdicts, which establish individual responsibility for criminal acts, is flawed for a number of reasons. We see in the case against Momčilo Krajišnik, for one, that the judges overlooked a discussion in the Bosnian Serb Parliament that explicitly addressed how to disguise genocidal intent—the necessity of which is predicated only by a genocidal plan.

Judges are no different from social scientists in that there is no legal norm or established set of rules that define for them precisely which evidence should be seen as a "smoking gun" to prove genocidal intent. Apart from analysis of the Krajišnik judgment, the case of Blagojević—who was at first declared guilty of complicity in genocide before the appellate court dismissed this charge with no new evidence—additionally demonstrates the subjective nature of the law.

Clearly, using judicially established truths to qualify mass crimes in Bosnia, or anywhere else, should not be the method genocide researchers apply. Original evidence introduced in courts has already been processed by judges within the context of establishing the guilt of an indicted individual. Even if individual criminal responsibility for genocide, committed during certain periods of time in particular territories, is not established, it is not inherently true that genocide did not take place. It only means that the judges in a particular case could not corroborate specific genocidal intent of the individual on trial. For example, in the Krajišnik case, while Krajišnik was acquitted of genocide, judges found that some of the crimes listed in his indictment do indeed "meet the requirements of the *actus reus* of genocide."[78]

This article has not been focused on the discussion of legal standards for the establishment of special genocidal intent; rather, it has attempted to highlight that, among legal minutiae elaborated in some of the verdicts concerning genocide, all that is reflected are the subjective impressions of judges who interpret evidence. This reality was also obvious in the first, historical judgment of the ICJ in the case of *Bosnia and Herzegovina v. Serbia*, which failed to establish responsibility of the state and to fully implement the 1948 Genocide Convention. This judgment was a radical departure from historical justice. It did not take into account all available evidence, primarily that which was used in the ICTY in the Milošević case. The ICTY gave guarantees to the state of Serbia that this evidence would not be disclosed to any third party, including the ICJ, without the agreement of the Serbian government. These documents were decisive in the procedural ruling against Milošević, wherein, after hearing the prosecution's evidence, judges ruled that "a trial Chamber could be satisfied beyond reasonable doubt that the Accused was a participant in the joint criminal enterprise, found by the Trial Chamber in paragraph 246 to include the Bosnian Serb leadership, and that he shared with its participants the aim and intention to destroy a part of the Bosnian Muslims as a group."[79]

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According to this ruling, apart from Srebrenica in 1995, "genocide was in fact committed in Brčko, Prijedor, Sanski Most, Srebrenica, Bijeljina, Ključ and Bosanski Novi."[80] One can logically conclude that a significant possibility exists that the ICJ judgment may have been different had the judges there been presented the same evidence seen by those in the Milošević trial chamber. Even though a procedural ruling does not carry the legal weight of a verdict, historians and genocide scholars should be aware of it when analyzing genocide in Bosnia.

Quite often, judicial truth is a departure from sociological theories, which frame genocide as a process requiring time to plan, serious organization to commit, and extensive participation of its executers. The selection of documentation presented in this analysis shows that genocide is also often a process that is not discreet, and therefore looking for the concealed intent of individuals, which is what much legal theory insists upon, is a pointless exercise. As the evidence presented above makes clear, the intent by Bosnian Serb leaders to destroy Bosnian Muslims was out in the open, and Radovan Karadžić freely and regularly discussed it.

Genocidal rhetoric was also prevalent in the public discourse of Bosnian Serb political and military leaders. And as video from the establishment of the Bratunac Brigade illustrates, genocidal intent trickled down to the soldiers, who proudly sang that they were ready to slaughter. Those were the same soldiers who, without protest or reservation, wrote that they constantly shelled columns of civilians who were searching for food. The evidence further shows how the VRS, coupled with the collaboration of UN forces, implemented the starvation of Bosnian Muslim civilians from Srebrenica. Despite Bosniak attempts to resist, and the organization of guerilla forces, actions for food were essentially meant for subsistence and did not pose a threat capable of preventing or stopping genocide.

Does the preceding documentation reveal a Serb plan to destroy the Bosnian Muslim people in Eastern Bosnia beginning in the spring of 1992? Does it imply that the genocidal action in Srebrenica that occurred in July 1995 was the culmination of that process? Was the primary tactic in the early part of the process, from 1992 to 1993, the use of starvation, recognized as a method of genocide by the Genocide Convention?

These documents, some of them used in the trials of Milošević, Krajišnik, and Brđanin, are being used again in the ongoing trial of Radovan Karadžić. In this article, they serve to answer the question of whether the political and military leadership of Serbia, together with the political and military leadership of the Bosnian Serbs, planned the genocide of Bosnian Muslims from the very start of their aggression on Bosnia and Herzegovina. And they shed light on the specific genocidal intent of the Bosnian Serb military and political leadership, something that continues to be largely hidden from the public and difficult to prove in court. This analysis does not give Serb leaders the benefit of the doubt as to their specific genocidal intent. One of the valuable by-products of war crimes trials is that they bring to light documents that would

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otherwise remain concealed in the perpetrators' archives. Even though the merit of some of those documents may be lost in the courtroom, where legal standards for proving genocidal intent are set very high, they are still of great worth to researchers. This article was intended to highlight the need for analysis of this documentation before researchers make conclusions about the genocidal intent of political and military leadership.

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